

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|------------------------------|---|--------------------------|
| BIOLOGIX FRANCHISE MARKETING |) | |
| CORP., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 4:18CV00714 AGF |
| |) | |
| KAY LOGIC, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's motion (ECF No. 31) to exclude the transcript of a phone conversation adduced by Defendants in their reply brief (ECF No. 30-1) on their motion to enforce settlement (ECF No. 24).

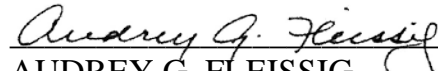
Plaintiff challenges the admissibility of the transcript on multiple procedural and evidentiary grounds (e.g., timeliness, completeness, hearsay, best evidence) but does not object to the audio recording, which Plaintiff has submitted with its motion (ECF No. 31-1). Defendant has responded to each of Plaintiff's objections and further asserts that the transcript poses no prejudice to Plaintiff.

The Court need not dissect the parties' substantive arguments regarding the transcript insofar as neither party objects to the admissibility of the audio recording. While the Court has reviewed the transcript and audio recording and does not find the transcript prejudicial, the Court will simply rely on the audio recording endorsed by both parties. *See e.g., U.S. v. Frazier*, 280 F.3d 835, 849-50 (8th Cir. 2002) (finding no abuse of discretion where the

district court instructed the jury that the recording and not the transcript constituted evidence, that the transcript was merely provided to aid the jury in following the conversation, and that the recording controlled in the event of any variance).

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to exclude the transcript is **GRANTED**. ECF. No. 31.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 9th day of September, 2019.